REMARKS

Applicants thank the Examiner for his time to discuss this case by telephone. Reconsideration and withdrawal of the Examiner's rejections under 35 USC§§112, 102(b), 102(e), and 103(a) is requested in view of the foregoing amendments and the following remarks.

35 USC§ 112

The Examiner has rejected claim 26 under 35 USC 112, second paragraph, asserting that claim 26 recites the limitation "emulsifier" in line 1 and that there is insufficient antecedent basis for this limitation in the claim. In response, applicants have amended dependent claims 25 - 27 to correct claim dependency. Amended claims 26 and 26 now depend from claim 24 which recites a polymeric emulsifier and amended claim 27 depends from claim 26.

35 USC§102

The Examiner has rejected claims 1-19, and 28-36 under 35 USC 102(e) as being anticipated by Dixon, US 6,407,044, asserting that Dixon teaches aerosol personal cleansing compositions (see abstract), where an example of such a composition is a shower gel base comprising 4.73% sodium lauryl ether sulfate, 3% glycerin, 5.25% lauroamphoacetate, 2.43% palm kernel fatty acid, 0.4% cationic polymer, and the balance water wherein the base is dispensed in a pressurized mixer containing 85-97% base and 3-15% propellant (col. 15, example I). The Examiner asserts that another example comprises 5.13% sodium lauryl ether sulfate, 0.5% trihydroxystearin, 1.43% lauroamphoacetate, 0.3% cationic polymer, 5% petrolatum, 7.5% soybean oil, and the balance water wherein the base is dispensed in a pressurized mixer containing 85-97% base and 3-15% propellant (col. 15, example F), and that as this reference meets all material limitations of the claims at hand, the

reference is anticipatory. The Examiner further asserts that with respect to the present compositions being present in a lamellar phase, as fatty acids and hydroxystearin are well known in the art as lamellar structurants, these examples will inherently exhibit this property. Applicants respectfully traverse this rejection in part.

Applicants respectfully point out that the instantly claimed hydroxy stearic acid is different from trihydroxystearin which is not a lamellar structurant (see attached printout from the CTFA database, containing the molecular structure of Trihydroxystearin.) Hydroxystearin is a typographical error and the specification has been amended to correct this error by changing the term to hydroxystearic acid.

Furthermore, Dixon relates to a relatively low viscosity aerosol personal cleansing composition. Applicants have amended claims 1 and 29 to add the limitations of claim 20, wherein the initial viscosity must be greater than 40 Kcps measured at 10Pa at 25°C. This viscosity value is substantially higher than the maximum viscosity taught by Dixon of about 100K cps measured at a substantially lower shear rate (see Dixon, col. 11, lines 36-44 and line 60 to col. 12, line 28). Claim 20 has been cancelled as being redundant.

A Declaration submitted herewith under 37 CFR 1.132 further describes the differences in viscosity between Dixon and the instant invention.

The Examiner has rejected claims 1, 2, 3, 4, 8-12, and 28-33 under 35 USC 102(b) as being anticipated by Osipow et al., US 5,308,643; asserting that Osipow et al. teach self-lathering shaving compositions (see abstract), an example of such a composition comprises 11% soap, 4.25% mineral oil, at least 2% coconut fatty acid, 2.12% corn oil, 4.5% isopentane, and the balance water (col. 9, example 2), and this reference meets all material limitations of the claims at hand, the reference is anticipatory. The Examiner further asserts that with respect to the present composition being present in a lamellar phase, as fatty acids are well known in the art as lamellar structurants, this example will inherently exhibit this property.

Osipow et al., relates to a shaving preparation combining an aqueous soap solution containing a high concentration of partially neutralized fatty acids (i.e., soaps) with a non-volatile, water insoluble organic liquid and a foam generating agent (see col. 3, lines 52-56), and wherein a minimum of 5.5% by wt. of neutralized fatty acids, i.e. soup, is contained in the composition (see abstract where 0.50% x 11.0% = 5.5%). To distinguish the instant invention over Osipow et al., applicants have amended claims 1 and 29 to add the further limitation of claim 34 wherein the composition contains less than about 4% by wt. of soap. Claims 34 and 35 have been cancelled as being redundant.

Claim 1 has been further amended to add the limitation of about 10% of at least one lipophilic emollient to distinguish over prior art compositions that are clear gels or that contain less than this quantity of emollient.

35 USC §103

The Examiner has rejected claims 1-36 under 35 USC 103(a) as being unpatentable over Schmidt et al., US 5,002,680; asserting that Schmidt et al. teach a skin cleansing aerosol mousse (see abstract), an example of such a composition comprises 6% alkyl glyceryl ether sulfonate, 40% mineral oil, 1% stearic acid, 0.25% cationic polymer, and the balance water wherein the base is dispensed in a pressurized mixer containing 94% base and 6% propellant (col. 11, example), moisturizers such as isopropyl esters of oleic and isostearic acids, and vegetable oils may be included in these compositions (col. 4, lines 11-40), amphoteric surfactanats such as betaines are suitable cosurfactants of the invention (col. 5, lines 7-20), and that it would have been obvious to one of ordinary skill in the art to add a well known moisturizer such as isopropyl esters of oleic and isostearic acids, well known in the art as lamellar structurants, to the example above and meet the material limitations of the claims at hand as such moisturizers are taught as suitable in the compositions of Schmidt et al.

Claim 24 has been amended to correct a grammatical error.

Schmidt et al. relates to a skin-cleansing aerosol mousse foaming emulsion. As discussed in the Declaration submitted herewith, it is well known in the art that mousses are characterized by low viscosity. Therefore, applicants respectfully submit that the amended claims containing a minimum viscosity of 40,000 cps measured at 10 Pa at 25°C distinguishes the instant invention over mousses and over Schmidt et al.

The Examiner has rejected claims 1-36 under 35 USC 103(a) as being unpatentable over Lyle et al., WO 00/39273; asserting that Lyle et al. teach self-foaming cleansing compositions (see abstract), an example of such a composition is a base comprising 10% sodium lauryl ether sulfate, 4% cocamidopropyl betaine, 0.15% guar hydroxypropyltrimonium chloride, 0.5% isopropyl palmitate, and the balance water wherein the base has a viscosity of 43,000 Pa, is dispensed in a pressurized aluminum can containing 92% base and 8% propellant (page 17, example 1); hydrophobic benefit agents of the invention include oils, essential oils, triglycerides, higher fatty acids such as lauric, oleic, linoleic and isostearic acids, and esters such as cholesterol isostearate (pages 8 and 9); amphoteric surfactants such as betaines are suitable cosurfactants of the invention (page 12); and would have been obvious to one of ordinary skill in the art to add a well known moisturizer such as fatty acids, well known in the art as lamellar structurants, to the example above and meet the material limitations of the claims at hand as such moisturizers are taught as suitable in the compositions of Lyle et al. Applicants respectfully traverse this rejection.

Lyle et al. relates to an isotropic low viscosity aqueous self-foaming liquid cleansing composition containing various surfactants, a hydrophobic component, and a post-foaming agent wherein the composition is substantially free of soap. Lyle et al. teaches away from the use of the inventive high initial viscosity post-foaming composition because Lyle discloses a composition of relatively low initial viscosity (e.g., less than 9,000 mPa [see page 4, line 35]) that only thickens some time after being blended with the self-foaming agent (see page 5, lines 20-29).

Furthermore, Lyle et al. teaches away from the claimed shear thinning lamellar structured composition by disclosing that the self-foaming composition on Lyle et al. "is. . . .'a stable isotropic system'" (see page 7, line 18), as opposed to a lamellar structured composition. Therefore, there is no motivation or suggestion for the skilled artisan to change Lyle et al's isotropic system to a lamellar structured composition. Lyle et al. does not therefore render the claims obvious as now amended.

In summary, by the present amendments, claims 1, 9, 21, 24-27, 29 and 36 have been amended, and claims 20, 34, and 35 have been cancelled without prejudice. Applicants submit that no new matter has been added by these amendments.

CONCLUSION

In light of the above amendment and remarks, and Declaration submitted herewith, applicants submit that the claims now pending in the present application are in condition for allowance. Reconsideration and allowance of the application is respectfully requested.

Applicants would appreciate receiving the signed Form 1449 for the supplemental IDS mailed on August 14, 2003 with the Examiner's response. A copy of the supplemental IDS is enclosed for the Examiner's convenience.

Also submitted, under separate cover via First Class Mail, are the formal drawings for the above-captioned case.

If a telephone interview would facilitate prosecution of the application, the Examiner is invited to contact the undersigned at the number provided.

Respectfully submitted,

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Trihydroxystearin is the triester of glycerin and Hydroxystearic Acid (q.v.). It conforms generally to the formula: $C_{57}H_{110}O_9$